

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**Browning-Ferris Industries of California, Inc.
Employer**

Case 31-RC-8250

and

**International Union of Operating
Engineers, Local 12, AFL-CIO
Petitioner**

DECISION AND DIRECTION OF ELECTION

The International Union of Operating Engineers, Local 12, filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of employees of Browning-Ferris Industries of California, Inc. (BFI or Employer) at its facility located at 14747 San Fernando Road, Sylmar, California.

The sole issue presented at the hearing is whether the Employer's four scalehouse employees should be included in the unit. The petitioned-for unit does not include scalehouse employees. The Employer contends that the scalehouse employees share a sufficient community of interest with the petitioned-for unit that requires their inclusion in an appropriate unit. The Petitioner believes scalehouse employees should not be included, but agreed to an election in any unit found appropriate by the Regional Director.

For the reasons set forth in Section V below, I conclude that scalehouse employees share a sufficient community of interest with the employees in the petitioned-for unit to require their inclusion.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

I. HEARING OFFICER RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

II. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.^{1/}

III. LABOR ORGANIZATION: The labor organization involved claims to represent certain employees of the Employer.

IV. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer, Browning-Ferris Industries of California, Inc., is a California corporation with a principal place of business located at 14747 San Fernando Road, Sylmar, California, where it is engaged in sanitary landfill operations. During the past 12 months, a representative period, the Employer sold materials valued in excess of \$50,000 to firms located within the State of California which, in turn, meet one of the Board's jurisdictional standards other than the indirect inflow or indirect outflow standard.

V. **APPROPRIATE UNIT:** The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time equipment operators, truck drivers, mechanical employees/service employees, spotters, grade checkers^{2/} and scalehouse employees employed by the Employer at its facility located at 14747 San Fernando Road, Sylmar, California.

EXCLUDED: Office clerical employees, temporary employees, confidential employees, administrative employees, plant clerical employees, caretakers, general laborers, gas recovery employees, nursery employees, all other employees, and professionals, guards and supervisors as defined in the Act, as amended.

In analyzing the issues in this case, I will first provide a brief overview of the Employer's operations. I will then specifically discuss the community of interest factors with respect to the scalehouse employees and the employees in the petitioned-for unit.

A. **AN OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer operates a landfill. The facility accepts trash for a fee from commercial customers as well as from residential customers. The site's size is approximately 400 acres. One half of the site is located in the City of Los Angeles and the other half is located in an unincorporated area of Los Angeles County. The

^{2/} The parties stipulated that the Employer currently does not employ a grade checker. The record was silent as to whether the Employer intended to fill the position in the future. The record reflects that operations supervisors are currently doing the grade checker work.

Employer currently operates in the County part of the landfill. The site is permitted to receive 6,600 tons of trash per day. The Employer must closely monitor the incoming trash on an ongoing basis to ensure that it stays within this limit.

Roughly 500 trucks a day enter and exit the facility. The drivers of these trucks are not employed by the Employer. The trucks enter at the gate, and drive on a wide two-lane road until they reach the scalehouse. All trucks must pass through the scalehouse before proceeding to unload trash into the landfill. There are a total of five scales -- four for inbound traffic, one for outbound. Incoming trucks line up at the scales, usually picking the inbound scale with the shortest line. Each of the trucks is weighed at the scalehouse when it enters and exits the site. The scalehouse is staffed with four scalehouse employees (also referred to in the record as cashiers). The scalehouse employees report directly to site manager Riel Johnson.

At the scalehouse, the scalehouse employees observe the load, ask questions of the driver, ticket the load based on the customer and the prices, and collect any money due. Throughout the day the scalehouse employees monitor and track incoming tonnage and communicate with the site manager, Riel Johnson, and the general manager, Frank Kiesler with respect to how close the facility is coming to its 6,600 ton limit for the day as well as contractual requirements for different customers. Based on these circumstances, certain customers may be prohibited from making any more deliveries to the landfill that day.

In the afternoons, as the facility nears its permit capacity, a spotter will be sent out to the front gate to turn certain customers away. As the day progresses, the spotter and the scalehouse employees will communicate with each other regarding which customers should be allowed into the site or turned away.

After a truck leaves the inbound scales, spotters direct the truck to the cell into which the truck is to "tip" its load. Cells are areas that have been lined with compacted clay and a high-density polyethylene plastic. The spotters direct the drivers as to where in the cell they are to tip their loads. There are five spotters in the petitioned-for unit.

Once the trash is dumped by the customer, equipment operators use bulldozers to spread the trash across the trash face. Next, an equipment operator using a compactor, a

very heavy piece of machinery, drives over the trash, compacting it as tightly as possible. Once the compacted trash reaches a thickness of one to two feet, a layer of soil is placed over the trash. This process is repeated until the cell has approximately 20 feet of compacted trash. At that time, the equipment operators spread a layer of compacted soil over the trash, and the incoming trash is sent to another cell. There are twelve equipment operators in the petitioned-for unit.

The petitioned-for unit also includes two truck drivers, who drive water trucks and sweeper trucks, to keep the roads clean and the dust down at the landfill site. The unit also includes four mechanical employees/service employees, who are responsible for fueling, servicing and performing minor repairs and replacements on the equipment.

B. UNIT PLACEMENT OF THE EMPLOYEES

The Board recognizes that there often is more than one way in which employees may appropriately be grouped. The Board does not require a petitioner to seek any particular appropriate unit. Rather, the Board only considers whether the unit requested is an appropriate unit, even if it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation*, 322 NLRB 723 (1996). In determining an appropriate unit in a representation case, the Board first considers the unit requested by the union and determines whether that unit is appropriate. It is only when the petitioned-for unit is not appropriate that the Board considers alternative units proposed by the parties. *P.J. Dick*, 290 NLRB 150, 151 (1988). Thus, it is not my role to determine whether the unit requested by the Petitioner or the broader unit proposed by the Employer would be the most appropriate unit. Rather, I must determine whether or not the unit requested by the Petitioner is an appropriate unit.

In determining whether the unit requested by the Petitioner in this case is appropriate, the following factors relevant to the employees' community of interest must be evaluated: the extent of centralization of management, supervision and human resources

functions and the similarities in the employees' terms and conditions of employment; the differences in the types of work functions and the skills of employees; the extent of functional integration of the operations; the extent of contact and interchange between employees; and the bargaining history. *Lawson Mardon U.S.A.*, 332 NLRB 1282 (2000); *Edenwald Construction Co.*, 294 NLRB 297 (1989).

(1) THE EXTENT OF CENTRALIZATION OF MANAGEMENT, SUPERVISION AND HUMAN RESOURCES FUNCTIONS AND THE SIMILARITIES IN EMPLOYEES' TERMS AND CONDITIONS OF EMPLOYMENT

The Employer uses the title "operations" to refer to the following grouping of job classifications: scalehouse employees, spotters, mechanical employees/service employees, equipment operators, and truck drivers. Site manager Riel Johnson directly supervises the scalehouse employees, operations supervisors and mechanical supervisor. The three operations supervisors directly supervise the equipment operators, spotters and truck drivers. The mechanical supervisor directly supervises the mechanical employees/service employees.

The three operations supervisors are interchangeable, and supervise employees in each of the three job classifications under their control. While the operations supervisors and the mechanical supervisor can discipline employees, they usually check with the site manager, and sometimes the general manager, prior to disciplining employees. Employees in the petitioned-for unit obtain most of their work assignments and direction from their direct supervisors, although they occasionally will receive direction from Riel Johnson. The Employer maintains standard work rules and disciplinary policies that apply to all of its employees at the site.

The Employer conducts new employee training for all of its employees. The Employer also conducts mandatory monthly training for all employees. The monthly trainings include such topics as safe working conditions, violence in the workplace and sexual harassment. Moreover, the Employer, through its supervisors, conducts weekly

“tailgate” trainings. These consist of 10 to 15 minute trainings with small groups of employees that take place during a lunch period, or before or after employees’ normal working time. While the tailgate training is mandatory for all operations employees, scalehouse employees rarely, if ever, are present at the same tailgate trainings as those given to employees in the petitioned-for unit.

The Employer has a standard benefit package for all hourly employees which allows employees to choose from plans that include medical, dental, 401(k), long and short term disability, and life insurance. Once a year, the Employer implements an across-the-board raise for all employees. In addition to that increase, employees are also eligible for merit raises. Management uses the same evaluation forms for all employees.

Currently, the pay ranges for the classifications at issue^{3/} are as follows:

- Scalehouse employees \$14.00 - 20.50 /hour;
- Equipment operators \$14.00 - 23.00/ hour;
- Spotters \$ 9.00 - 11.50/hour;
- Truck drivers \$ 10.50 - 12.50/hour;
- Mechanical employees/service employees \$ 16.00 - 25.00 /hour.

The Employer hosts a few events each year that all employees are entitled to attend, such as picnics, barbecues and Christmas parties.

From Monday through Friday, scalehouse employees have staggered start and end times and cover the scalehouse from 5:30 a.m. until 6:00 p.m. Spotters and truck drivers have staggered start and end times and cover the hours 5:00 a.m. until 6:45 p.m. Operators also have staggered start and end times and are present at the site from 5:00 a.m. until 7:00 p.m. The record does not reflect which hours the mechanical employees/service employees work.

The employees in the petitioned-for unit all perform work outside at the site. The scalehouse employees work inside the scalehouse. The employees in the petitioned-for unit are required to wear uniforms while at work. The scalehouse employees are not required to wear uniforms. The employees in the petitioned-for unit usually eat in the lunchroom and change in the locker room next to the lunchroom. The employees in the petitioned-for unit also punch a time clock in the lunchroom.⁴ While the lunchroom is open to all employees, the scalehouse employees do not typically use the lunchroom. The supervisors, one mechanic and the scalehouse employees have access to Nextel radios. Other employees in the petitioned-for unit have access to two-way radios, but not to the Nextel system. The employees in the petitioned-for unit park next to the administration building. The scalehouse employees park at a separate location near the scalehouse.

(2) DIFFERENCES IN THE TYPES OF WORK AND THE SKILLS OF EMPLOYEES

There are some similarities between the duties of some of the employees in the petitioned-for unit and the scalehouse employees. The Employer requires a high school diploma or equivalency for all employees. The Employer also requires some field experience for mechanics. The scalehouse employees, spotters and operators have been trained to check the incoming trucks and the materials dumped at the site for prohibited hazardous materials and to report such incidents to their supervisors.

The record also reflects some differences in the skill sets required for the different positions. Scalehouse employees must possess math skills to continuously calculate the tonnage that has been received by the facility at any given time and to determine how much additional load the facility can receive that day. Scalehouse employees also must possess

³ / The record does not reflect the pay range for grade checkers.

⁴ / The record indicates that employees in the petitioned-for unit had never seen scalehouse employees punch the time clock in the lunchroom. There record is silent as to where, if anywhere, scalehouse employees punch a time clock.

cash handling skills, as they deal with residential customers who pay on a per use basis to dump items at the landfill.

Employees who work as operators, spotters and mechanical employees/service employees, must have some rudimentary knowledge of the heavy equipment, as employees in each of these job classifications will operate the equipment at times. Scalehouse employees do not operate the heavy equipment. Spotters are the least skilled and lowest paid classification in the petitioned-for unit, but they do move the heavy equipment from the trash area off to the side where maintenance can be performed.

(3) FUNCTIONAL INTEGRATION

The scalehouse employees' functions are integrated into the employer's business of operating a landfill. The record reflects that the trash cannot make it to the landfill area without first passing through the scalehouse. This is necessary to ensure that the site does not receive waste in excess of its permitted daily capacity. Scalehouse employees, along with spotters and equipment operators, help ensure that prohibited hazardous materials are not received onto the site. The scalehouse employees view incoming trucks through overhead cameras when they come to the scalehouse looking for prohibited materials. If a scalehouse employee sees hazardous materials in a truck, the employee reports that to a supervisor and does not allow the truck to proceed to the landfill until the supervisor arrives. Spotters and equipment operators are also trained to inspect the trucks and the trash that the trucks dump in the landfill to ensure that there is not prohibited hazardous materials. In the event that a spotter or equipment operator spot hazardous materials in the landfill, they contact their operations supervisor who works with the scalehouse employees to try to track down which company brought the prohibited materials to the landfill.

(4) THE EXTENT OF CONTACT AND INTERCHANGE BETWEEN EMPLOYEES

There is extensive daily contact between the employees within different classifications in the petitioned-for unit. All of the employees in those classifications

spend some or most of their time working on or nearby the trash face at the landfill. Operators, spotters and truck drivers are in constant communication regarding the flow of waste into the landfill. Operators and water truck drivers speak with mechanics on an ongoing basis to report problems and needed repairs for the equipment that they operate. Mechanics have little interaction with spotters. Mechanics perform some of the repairs at the site where the equipment breaks down, and perform other repairs at the shop on-site. Employees in the petitioned-for unit use the same lunchroom, locker room and time clock.

There is limited direct contact between the scalehouse employees and the employees in the petitioned-for unit. On a daily basis, the scalehouse employees speak with the spotter who is assigned to the front gate to turn away trucks from certain customers when the landfill nears its permitted capacity. The front gate position usually is filled with temporary employees (a category excluded from the petitioned-for unit). A permanent spotter is assigned to the front gate only about once per month. When a spotter is needed at the front gate, a scalehouse employee calls an operations supervisor, who then directs a spotter to where they are needed. Once there, the supervisor will notify the scalehouse. Spotters and scalehouse employees also have limited direct contact with regard to a daily log that either a spotter or an operations supervisor will physically bring to the scalehouse on a daily basis. Scalehouse employees and other employees in the petitioned-for unit may go months without seeing or speaking to each other, except at monthly safety meetings. The record reflects that communication between the scalehouse employees and other employees in the petitioned-for unit usually takes place through an operations supervisor. For example, if an operator wishes to know whether they should start closing off some of the fill lanes in the landfill, he radios his supervisor and asks how many more trucks are expected that day or how close the landfill is to its tonnage cap. The operations supervisor then uses the Nextel communicator to speak to the scalehouse to obtain this information, and then relays it back to the operator. In the event of an emergency on the trash face, operators first must contact their supervisor, who then contacts the scalehouse to have them

use a land telephone line to call 911. The record reflects that there is very little contact between mechanics and the scalehouse employees.

There is significant interchange between the spotters, operators and truck drivers in the petitioned-for unit. If a water truck driver is not present, a spotter or operator may take over for them. One operator who could not operate heavy machinery for two weeks because of a medical condition, worked as a spotter during that time. When the spotters are very busy, operators sometimes will sometimes leave their equipment and help them spot during the rush. Spotters also fill in for operators when the Employer is short on operators. As spotters become more experienced, they typically will become operators. One spotter has become a mechanic.

There is some interchange between the employees in the petitioned-for unit and the scalehouse employees. In the past two and one-half years, two or three spotters have transferred to the scale house. None of the four current scalehouse employees have held any position in the petitioned-for unit. The scalehouse employees do not substitute for spotters, operators, truck drivers or mechanical employees/service employees, in the event that the Employer is understaffed in one of those areas. When a scalehouse employee is sick, the Employer has one of the other scalehouse employees work longer hours rather than using another employee from the petitioned-for unit.

(5) **BARGAINING HISTORY**

There is no relevant recent bargaining history. Bargaining did take place between the Employer, Local 12 and another union over 10 years ago, but did not result in a collective bargaining agreement. In June 2002, an election was held pursuant to a Stipulated Election Agreement between the Employer and Local 12. The stipulated unit included drivers, operators, mechanics, spotters, nursery employees, gas recovery employees, and scalehouse employees. Local 12 was not certified as the bargaining representative as a result of the election.

C. **CONCLUSION**

In light of the foregoing, I conclude that the petitioned-for unit is not appropriate because those employees do not possess a community of interest separate and distinct from the scalehouse employees. Notably, I find that the scalehouse employees' work is highly integrated with that of the employees in the petitioned-for unit. The Employer's process of receiving waste into its landfill is accomplished through the coordinated efforts of the scalehouse employees and the others in the petitioned-for unit.⁵

Moreover, there are significant similarities in the terms and conditions of employment of all of the operations employees. Scalehouse employees' hourly wages are comparable to, and overlap with, the hourly wages for employees in the petitioned-for unit. All operations employees receive the same tailgate trainings and attend the same monthly training sessions. All operations employees report to site manager Riel Johnson, either directly or indirectly. With the exception of the mechanical employees/service employees, all operations classifications require only a high school diploma or its equivalent.

⁵ / *The Boeing Company*, 337 NLRB No. 24 (December 20, 2001) slip op. at 1-2 (appropriate unit must include all three classifications of employees that were part of a coordinated effort to repair engines, despite minimal contact and interchange and geographic separation between the three classifications); *Dundee Cement Co.*, 170 NLRB 422, 424-25 (1968) (finding that appropriate production and maintenance unit must include controlroom technicians and laboratory technicians because employer's operations were highly integrated,

Scalehouse employees annually receive the same percentage increase as the employees in the petitioned-for unit. All of the employees at the site are subject to the same Employer policies and regulations.

I do not find that the differences in working conditions with respect to uniforms, the lunchroom, the time clock or the parking lots dispositive in the instant case. Likewise, I do not find that the lack of temporary interchange between the scalehouse employees and the employees in the petitioned-for unit requires a different result. See *The Boeing Company, supra*, slip op. at 2 (separate supervision, separate employee meetings, separate work areas and absence of temporary transfers not dispositive where the workforce was highly integrated, had similar training and job functions and comparable terms and conditions of employment); *Scholastic Magazines, Inc.* 192 NLRB 461, 462 (1971) (high degree of functional integration between departments and warehouse required inclusion of non-warehouse employees in unit despite differences in supervision and lack of interaction).⁶

DIRECTION OF ELECTION⁷/

I shall conduct an election by secret ballot among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

ELIGIBLE TO VOTE: Those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or

despite geographic separation, lack of direct communication, and differences in terms and conditions of employment).

⁶/ As I do not find that the record supports Petitioner's claim that the scalehouse employees are office clericals, there is no need to distinguish the cases it cites in that regard.

⁷/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

temporarily laid off, are eligible to vote. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls.

INELIGIBLE TO VOTE: Employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced are ineligible to vote.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 12, AFL-CIO.**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employers with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I have determined that an

adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before, July 7, 2003. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

A request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, under the provision of Section 102.67 of the Board's Rules and Regulations. This request must be received by the Board in Washington by July 14, 2003.

DATED at Los Angeles, California this 30th day of June, 2003.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

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